

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

-against-

EPIFANIO ESPINOSA,

Defendant.

No.: 21-CR-1326-MV

SECOND UNOPPOSED MOTION TO CONTINUE TRIAL SETTING AND TO EXTEND
THE PRETRIAL MOTIONS DEADLINE

COMES NOW Wayne Baker, Esq., counsel for Defendant Epifanio Espinosa, who, with the concurrence of assigned Assistant United States Attorney Paul Spiers, hereby moves this Honorable Court to continue the trial setting and to extend the pretrial motions deadline by a minimum of one-hundred twenty (120) days, and in support thereof, states as follows:

1. On or about August 26, 2021, the Defendant Epifanio Espinosa was arrested by federal agents based on a criminal complaint (Doc. 2) issued, and a search warrant executed, the day prior.
2. On September 1, 2021, the Defendant appeared with assigned counsel and executed a waiver of a preliminary hearing (Doc. 13) and a waiver of a personal presence (Doc. 12) and an order of detention was entered (Doc. 14).
3. On September 9, 2021, new counsel entered an appearance on behalf of Mr. Espinosa. (Doc. 15).

4. On September 14, 2021, an Indictment was filed (Doc. 19) charging the Defendant with possession with intent to distribute a controlled substance and felon in possession of a firearm. An Arraignment on the Indictment was scheduled and terminated due to Mr. Espinosa's COVID-19 exposure at the detention facility.
5. On October 15, 2021, the Defendant entered a not guilty plea to the two-count Indictment and conditions of release to La Pasada Halfway House were entered.
6. On November 27, 2021, undersigned counsel entered an appearance on behalf of Mr. Espinosa.
7. On December 16, 2021, an Unopposed Motion to Modify Conditions of Release was filed (Doc. 39) and So Ordered (Doc. 40) that same day. Mr. Espinosa was allowed to leave La Pasada and return to his residence.
8. On December, 22, 2021, Mr. Espinosa entered UNM Hospital for a previously scheduled total knee replacement surgery.
9. He is presently convalescing at his residence with physical therapy. Defendant has been entirely compliant with all release conditions.
10. Undersigned counsel has received the complete discovery in this case.
11. Counsel has had the opportunity to fully review the discovery with the Defendant.
12. The Defendant is still convalescing from his knee surgery.
13. Presently discussions are being held with the assigned AUSA to agree upon a reasonable resolution of the case. Then counsel will need to discuss the plea options with the Defendant.
14. It is the Defendant's present intention to resolve this matter without the need for a trial on the merits.

15. Counsel believes a one hundred and twenty-day (120) extension of all scheduled deadlines will be sufficient time to come to a reasonable resolution of this matter, to discuss it with the Defendant and for the Defendant to continue to recover from his knee surgery and attain sufficient mobility. Counsel is confident the additional time will likely dispose of this matter without the need for a trial.
16. The Speedy Trial Act (“Act”) requires that a federal criminal trial commence within seventy (70) days of the later of the filing of the information or indictment or the defendant’s initial appearance. 18 U.S.C. § 3161(c)(1). However, the Act excludes from the seventy-day period, *inter alia*, “[a]ny period of delay resulting from a continuance . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). See also United States v. Toombs, 572 F.3d 1262 (10th Cir. 2009).
17. The Defendant has been advised of the provisions and parameters of the Speedy Trial Act and the implications of waiving speedy trial time.
18. The Defendant wishes to waive his rights under the Speedy Trial Act, 18 U.S.C. § 3161, for the continuance time requested herein, which should be excluded from the statutory time limits as the interests of justice will best be served by providing for a continuance potentially resulting in an agreed disposition.
19. The assigned AUSA has been informed of the contents of the instant motion and concurs with the requested one hundred and twenty-day (120) day continuance.
20. This is undersigned counsel’s second request for a continuance.

WHEREFORE it is requested that the Court grant the instant Unopposed Motion to Continue Trial Setting and to Extend the Pretrial Motions Deadline and issue an Order in accordance therewith.

Respectfully submitted:

Wayne Baker

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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court on June 8, 2022, using the CM/ECF system.

Wayne Baker

Wayne Baker, Esq.